

Interpretation of Statute :-

① Statute means the will of the legislature. Interpretation of statute means understanding the will of the legislature i.e. understanding the underlying meaning of the law.

② There are 2 rules of interpretation:-

Primary Rules

Secondary Rules:-

③ PRIMARY RULE:-

① RULE OF LITERAL CONSTRUCTION:-

The words, phrases & sentences used in the law will be interpreted by giving their most ordinary, natural & popular meaning & applying the rule of normal English language & literature. In the case of H.P. vs. Pawan Kumar Supreme Court held following observations on the rule of literal construction:-

(a) Law will be interpreted by applying the rules of normal English grammar & literature.

(b) By doing so if it leads to repugnancy, inconsistency or absurdity, then the meaning can be modified, abridged, extended to remove such inconvenience & no further.

(c) The onus to prove the inconsistency lies on the person who alleges it.

(d) He must advance proof/evidences to show the repugnancy of its meaning.

② HEYDON'S RULE / RULE OF MISCHIEF / RULE OF BENEFICIAL CONSTRUCTION:-

① This rule is applied only when the words are ambiguous & capable of multiple interpretations [SC in case of *Sodra Devi*].

② This rule came in 1584 in Heydon's Case in England.

③ That meaning of the word will be taken by which we can suppress the mischief i.e. punish the wrong done i.e. advance the remedy.

④ Before applying this rule 4 factors shall be considered:-

① What was the common law before making this law?

② What was the mischief, defect for which the common law did not provide for?

③ What is the object, cause, remedy of the new Act passed by Parliament?

④ What is the true reason of remedy?

③ Rule of Harmonious Construction:-

Where on the same subject matter, there exists more than 1 provision then we should combine those provisions & follow the combined provisions in such a manner that none of the provisions gets defeated.

Held in the case of *Raj Krishna Vs Pinod*

Kanungo.

eg. There is a provision in the Companies Act 2013 which says that AGM should be held within 18 months from the date of last AGM & one of the another provisions says that it shall be held within 6 months of the end of F.Y. Here, rule of harmonious construction shall be applied to give effect to both the provisions of the law & $\therefore$ AGM should be held in earlier of those 2 dates.

(4)

Rule of Ejusdem Generis:-

It means of the same kind or species. This rule is applied in the following manner:-

- (1) When Statute/Law contains specific words.
- (2) These specific words belong to a particular class.
- (3) The class is not exhausted
- (4) It is followed by a general word
- (5) The general word cannot be interpreted in a wider fashion.
- (6) General words will take its meaning from the preceding specific words & belong to the same class only.

[Held in case of Thakurn Singh V's Revenue Minister J&K]

For eg. In a zoo it contains Lion, Tiger, leopard & others. The word other cannot be extended to include cows, buffaloes etc. It can only include wild animals.

(5)

Rule of Exceptional Construction:-

If the literal construction leads to absurdity, inconsistency / repugnancy then following exceptions will be applied:-

(5) Rule of Reasonable Construction: → will be applied to per which instead of literal, sensible meaning will be given to the words of law. This is also called as Common Sense rule or Rule of Reasonable construction where sensible meaning shall be taken if literal meaning is making it void. Reasonable construction in Latin is called as Utres Magis Valet quom Perent.

(6) The conjunctive-disjunctive Rule:-

(1) To avoid repugnancy 'and' will be read as 'or'.

(2) To avoid repugnancy 'or' will be read as 'and'.

eg:~ As per sec 7 of the Office Secrets Act 1920,

(E) May, must & shall:~ The word may is directory (optional) whereas the word shall is mandatory (compulsory).

To avoid repugnancy sometimes the word shall will be read as may & the word may will be read as shall.

For eg:~ In companies Act it says that

the company may be formed for a lawful purpose. But here the word may will be interpreted as shall i.e. it cannot be formed for unlawful purpose.

Secondary/Other Rules of Interpretation:~

(a) Expressio Unius est exclusio alterius:~

It means the express mentioning of one thing implies exclusion of other.

For eg: ~ (i) If a question is having 4 alternatives and if we mention that one alternative is correct, then it is not required to mention separately that the remaining 3 options are incorrect.

(ii) In The Companies Act 2013, we have read that a Proxy can vote only by Poll. This excludes the right of proxy to vote by show of hands & it need not be mentioned separately.

(b) Contemporanea expositio est optima et fortissima in lege:~

This means the best way to interpret the old statute is to interpret it the way it would have been interpreted on the day when the statute was passed.

If the meaning of the words used in the statute have undergone alterations the best way is to take that way the meaning it prevailed when the statute was passed.

(c) Noscitur sociis:~

It means that the words used in the statute are known by their associate words i.e. their accompanying words.

If there is any ambiguity in a particular word, then take its meaning from

the associate/accompanying words.

For eg. A bag contains soap, toothpaste, brush & oil. Here oil will be interpreted as 'hair oil' & not any other oil.

(a)

Strict & Liberal construction:-

Strict construction mean exhaustive & restrictive construction.

For eg. if a definition starts with the word 'mean', the meaning of the statute will be there interpreted in a restrictive & exhaustive way.

The definition of Company as per sec 2(20) of the Companies Act 2013 define Company as :- Company means a co. incorporated under this Act or under any prev company law.

Because of the strict construction of the word co, foreign co. is not regarded as 'co'.

Liberal construction means inclusive & extensible.

If any definition starts with includes then it can be extended to include other things as well.

For eg. in. As per sec 2(11) Body Corporate includes a co. incorporated outside India.

So, this definition is regarded as inclusive and is interpreted using liberal construction, so it will also include companies incorporated in India.

Presumptions Taken in Law:-

① The words used in the statute are used precisely & not loosely.

② whatever rights & privileges the person had at the time when a new statute was passed will remain the same & will not be taken away unless it is mentioned

- expressly in the new statute.
- (3) Mens rea i.e. guilty mind has to be proved for a criminal offence.
 - (4) ^{→ (Court)} The State is not affected by any Law/Statute unless it is expressly mentioned in that statute.
 - (5) The Statute is not required to be consistent with the principles of the International Law.
 - (6) Legislature knows the State of the Law/Statute.

Internal Aids to Interpretation:-

- (1) Title
- (2) Preamble
- (3) Chapter & Heading
- (4) Marginal Notes
- (5) ~~Proviso~~ Exception

Save otherwise
↓

Sec 152
Sec 161 → (BR)

provided
- (6) Illustration & Explanation
- (7) Schedule

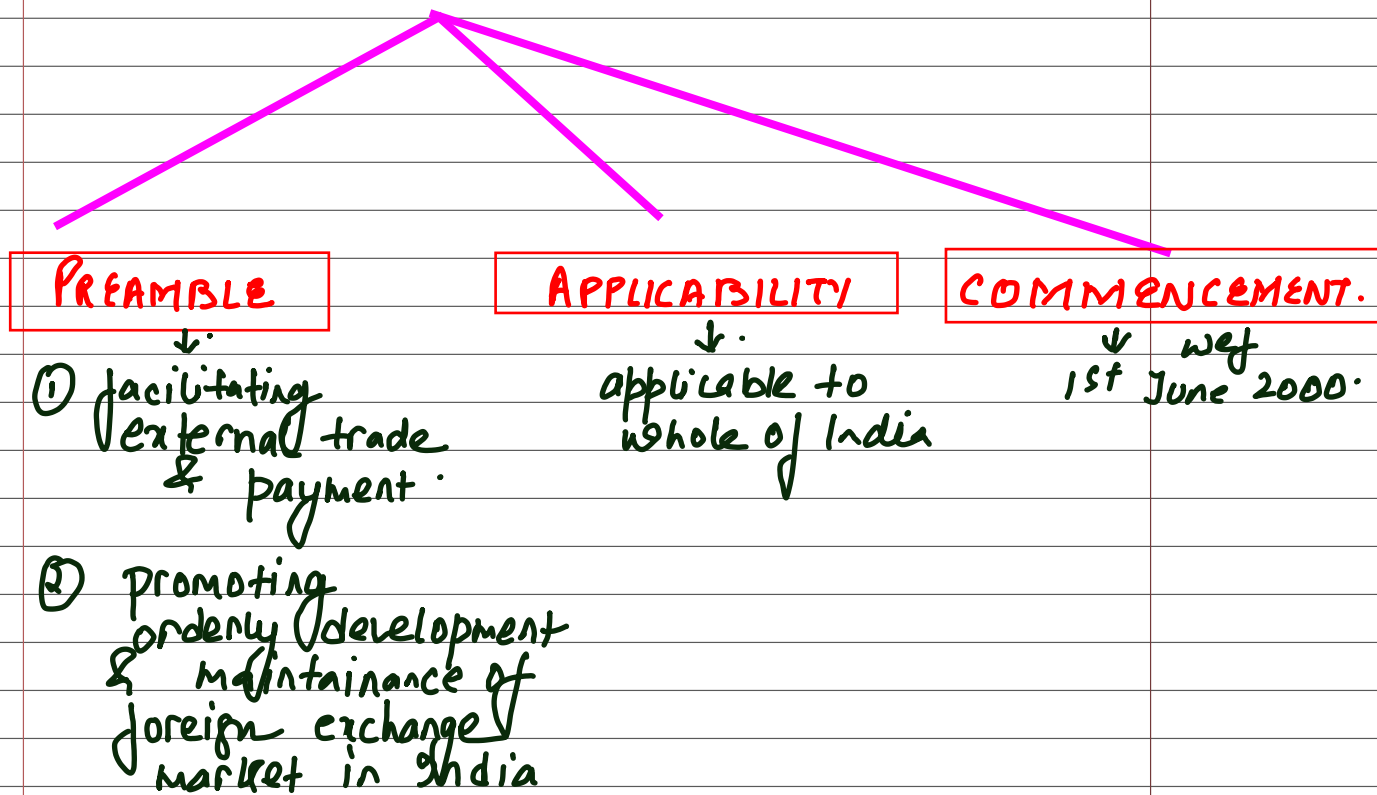
Internal & External Aids of Inter

To be done from Mat/Hard copy.

HW. ✓ (Q1) Discuss various internal aids of Interpretation.

(Q2) Discuss the various types

FEMA, 1999:~

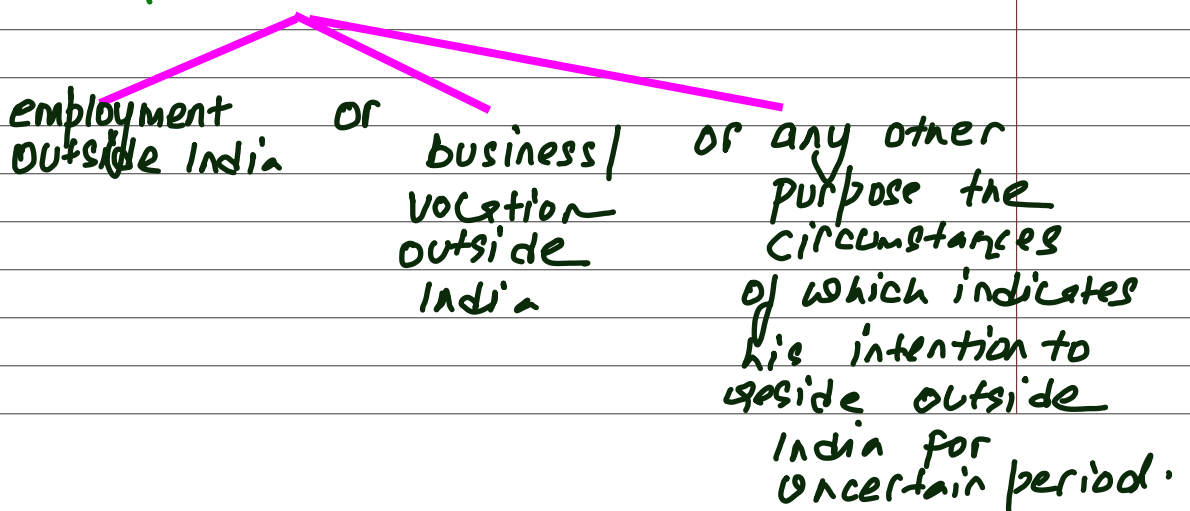


FEMA 1999 repealed the FERA, 1973 (Foreign Exch. Reg Act).

Residential Status under FEMA 1999:~

Person Resident in India as per sec 2(v) means a person residing in India for more than 182 days during the course of preceding FY but does not includes:-

(A) A person who goes out of India/ stays outside India for any of the following 3 purposes:-



(B) A person who came to India or stays in India for any purpose OTHERWISE than the following 3 purposes: ~

employment
in India

Business/
Vocation in
India

Any other purpose
the circumstances
of which indicates
his intention to
stay in India for
an uncertain period.

Following persons are also regarded as PRI.

Any person
or BO registered
or incorporated
in India

Any office/
Branch/
Agency
in India
owned or
controlled by
PROI.

Any office/branch/
Agency
outside
India but
owned or
controlled by
PRI.

Person Resident Outside India as per Sec 2(w)
means a person who is not ^{person} resident in India.

eg: ~ 1:- Rahul went outside India for the
1st time in FY 23-24. for vacation.
Comment on his residential status for
FY 23-24 under FEMA.

Ans

FY - 23-24 $\Rightarrow$ PRI because in the
preceeding FY he has resided in India
for more than 182 days & he did not
leave India for any of the 3 purpose.

eg: 2:- What if in the above case it was Vocation
instead of Vacation.

Ans

FY 23-24 $\Rightarrow$ PROI, although he
resided in India for more than 182
days in the previous FY but he
leaves India for vocation which
falls under one of those 3 purposes.

eg 3: n

Tony Stark came to India for the first time & resides in India for 200 days in FY 23-24 for

Vocation : Comment for FY 23-24 & 24-25.

Ans FY 23-24 - PROI because he did not reside in India for more than 182 days in the preceding FY.

FY 24-25: → PRI as he resides in India for more than 182 days in the preceding FY i.e. 23-24 and for one of those 3 purposes i.e. vocation.

eg 4: What if he came for vacation? n.

Ans. FY 23-24 - PROI
FY 24-25 - PROI.

eg 5:- Rahul is going out of India in FY 24-25 for pursuing MBA for 3 yrs for the first time.

Ans. 24-25 ⇒ PRI
25-26 ⇒ PROI.

Alternative
However as per RBI circular if a person goes out of India for education, it is assumed that he has no intention to come back to India and stay outside for an uncertain period, so even if he resides for more than 182 days in the preceding FY he shall be regarded as PROI in the FY 24-25 (Current).

Q6: An airhostess of British Airways stayed at Mumbai Base for more than 182 days in FY 20-21. Comment for FY 21-22.

Ans. FY 21-22: - PROI.
Although her stay exceeds 182 days in India in FY 20-21 but it was a compulsory stay & not for employment in India or any of those 3 purposes.

Note:- Had she been employed in Mumbai Branch of British Airways then the answer would have been PRI.

Q7:

Japanese toy co. has its head office in Mumbai which controls the Singapore Branch. Comment on the Residential Status of the Mumbai Branch & the Singapore Branch.

Ans

Mumbai Branch => PRI
[the office is situated in India even owned or controlled by PRI].

Singapore Branch => PRI

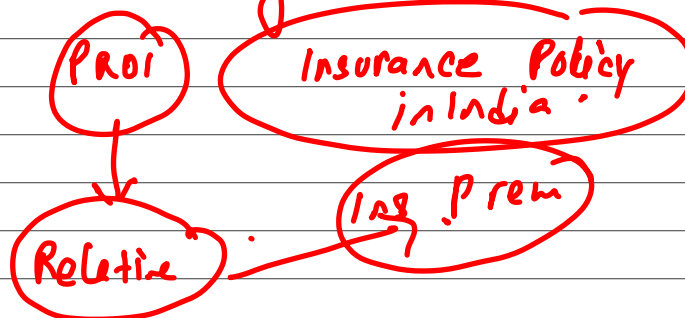
[although situated outside India but Owner or controlled by a PRI].

Sec 3:- Dealing in Foreign Exchange.

No person shall be allowed:-

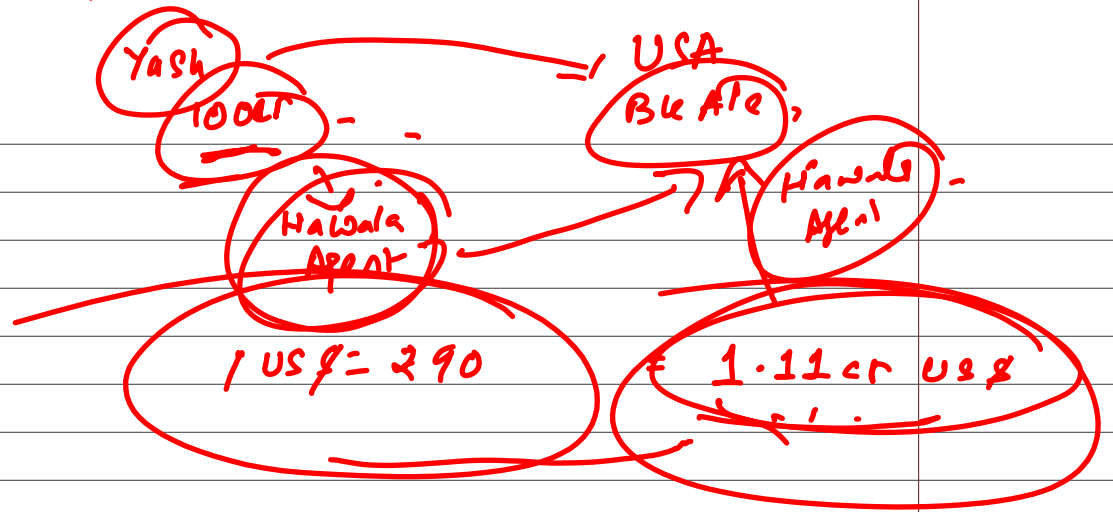
① To deal ~~transfer any for ex/for~~ security otherwise than by an A.P.

② to make any payment / or to the credit of PROI.



③ to receive any amt. from a PROI in India otherwise than through AP.

(4) Hawala Transactions:-



Sec 3:- Dealing in Foreign Exchange:-

No person shall:-

(a) deal or transfer any foreign exchange or foreign security to any person not being an A.P.

eg → USA friend US\$ → PRI
Sale
[Not allowed]

(b) make any payment or to the credit of on the behalf of a PROI.

PROI → PRI (Indian Relative).
ask his to pay insurance premium on his behalf in India
[Not allowed]

(c) receive any payment from a PROI in India other than through an A.P.

PROI US\$
↓
Indian Rest.
[Not allowed]

(d) enter into any financial transaction in India

consideration association with acquisition, creation, transfer of right in relation to asset outside India by any person.

ie. HAWALA TRANSACTIONS.

eg → Yash
↓
1000 wants to park in USA B/K A/c

contacts a Hawala Agent in India.



contacts a Hawala Agent in USA



He transferred
 $100\text{cr}/\text{₹}90 = 1.11\text{cr US\$}$
in USA's B/R A/c
to the credit of Yash.

However the above transactions are allowed if mentioned otherwise in the Act
OR

By general or special permission of RBI.

Sec 4:- Holding of foreign Exchange:-

RBI can hold currency notes upto an amt. not exceeding 2000 US\$ or in any other foreign currency equivalent to such amt.

However coins → Unlimited.

Sec 5:- Current A/c transactions:-

Current A/c transaction has been defined negatively in Sec 2(j) of the FEMA, 1999 which means a transaction that is not a capital A/c transaction.

Examples:-

- (i) Payments in the course of ordinary course of foreign trade.
- (ii) Payments in form of int on loan or inc acc. from investment.
- (iii) Remittances for living expenses of parents, spouse, children living abroad.
- (iv) expenses in connection with foreign travel,

education etc.

Current A/c Transactions:~

Schedule-I

↓
List of current A/c transactions for which withdrawal of foreign exchange is prohibited.

↓
Refer Mat

Schedule-II

↓
List of current A/c transactions permissible with C.G.'s approval (concerned Ministry)

↓
Refer Mat

Schedule-III.

↓
List of current A/c transactions permissible after prior approval of RBI is taken.

Individual Other than Ind. Corporates

↓
upto 2,50,000 us\$

No RBI's approval is reqd.

>2,50,000 us\$ then take

RBI's approval

LRS

↓
(Liberalized Remittance Scheme)

↓
(Refer Mat)

- Donation
- Commission to foreign agents for sale of residential flats, plots in India

• Pay for consultancy services related

Infrastructure Others

• Pre-Inc Exp.

Current A/c tr:~

Note:~ The transactions which are not listed in any of the above 3 schedules can be undertaken freely:~

Note 2:-

If any remittances have been made for transactions listed in sch II & sch III from (1) RFC A/c OR (2) EEFC A/c no permission/approvals are required.

Provided that approval is reqd if remittance is for membership of PFI club.

Note 3:-

Any person can incur any expenditure for transactions listed in schedule III on his travel to abroad through his International credit card.

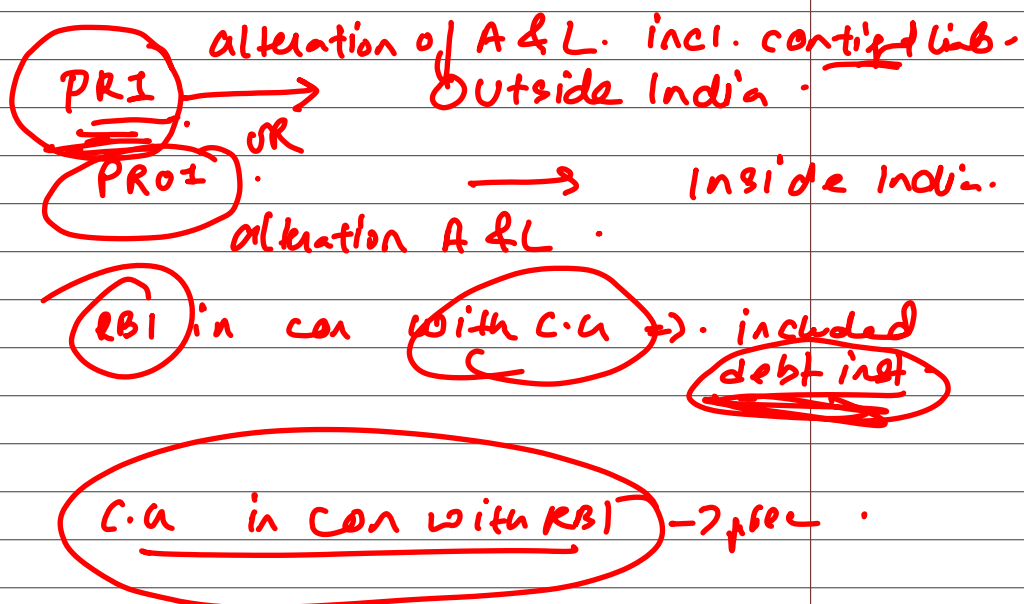
Even a minor can be a remitter but LRS declaration form has to be signed by minor's natural guardian.

Note 5:-

Consolidation of remittances allowed i.e. clubbing allowed in case of family members.

CAPITAL A/c Transactions:-

↓
Sec 6

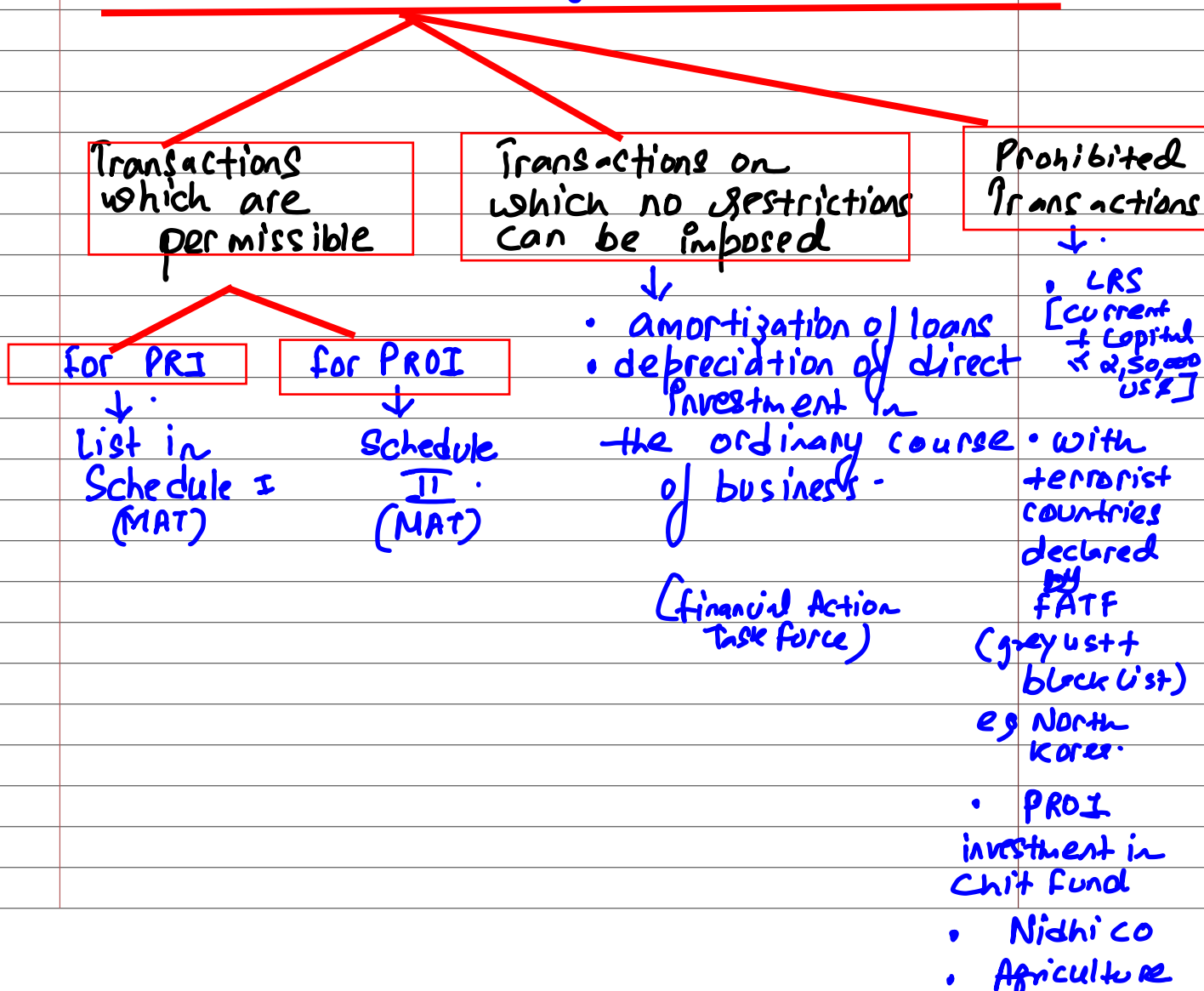


① **Capital A/C transactions means** the transactions which alters the assets and liabilities including contingent liabilities outside India of a PRI and which alters assets & liabilities in India of a PROI.

② RBI in consultation with C.U may specify such transaction or class of transactions including debt instruments for which withdrawal is permissible, they may specify the limits & conditions subject to which they are allowed.

③ C.U in consultation with RBI → transactions other than debt instruments

④ Three types of Capital Transactions:-



- Trading in TDR's
- Real Estate bus (except dev. of township)

The General Clauses Act 1897:~

Introduction:~

- ①. This Act intends to provide general definition of the words used in the Central Act or Rules or Regulations contained therein.
- ②. It was enacted on 11th March 1897 & it consolidated the General Clauses Act of 1868 & 1887.
- ③. It is also known as Law of All the Laws and Interpretation Act in foreign countries.

Object / Purpose & Importance of the Act:~

To shorten the language of Central Act, Rules & Regulations made there under

② To provide uniformity in the use & understanding of legal expressions

Application of the Act:~

The GCA 1897 does not prescribe any territorial extent for the application of the Act rather it is applicable in all the territories where the Central Act is applicable.

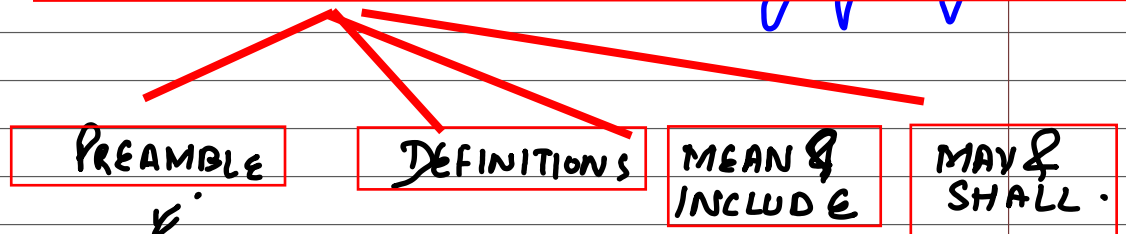
Held by S.C in the case of Chief Inspector of Mines vs Karam Chand Thopar that whatever the General Clauses Act

15

General clause Act (cont)

- ① Central Act, Rules, Regulations made there under.
Further States may enact their own State General Clause Act but it should not be en-consistent with the General Clauses Act 1897 as it will lead to lot of confusion.

Some Basic Understanding of Legislation:-



Preamble:-

- ① It expresses the objective, scope & purpose of the Act.
- ② It is the primary source to understand the real intention of the legislature.
- ③ Whenever there is any ambiguity in understanding any provisions of the Act, its Preamble can be referred to, so that the ambiguity gets resolved. This means Preamble can be referred as internal aids in the interpretation of the statute.
- ④ Preamble cannot over-ride the provisions of

the Act.

eg. ① The Preamble of the Negotiable Instrument Act 1881 states that it is "a law to define & amend the law relating to Promissory Note, B.O.B & cheques."

② The Preamble of the Companies Act 2013 states that it is an Act to consolidate and amend the law relating to companies.

Definitions:-

① They are generally mentioned in Sec 2 or Sec 3 or other initial sections of the Act.

② However if a particular word is not defined in the their respective Central Act, then the meaning of such words shall be taken from the General Clause Act 1897.

③ Example:-

Company:-
The word company has been defined u/s 2(20) of the Companies Act, 2013, so its meaning shall be taken from there.

Affidavit
↓
This word has been used in Sec 7 of the Companies Act during Incorporation of Company but the word has not been defined there. So it will derive its meaning from the General Clauses Act 1897.

Means & Includes

Means
↓

If any definition starts with means its an exhaustive &

Includes
↓

If any definition starts with includes, its an

Restrictive definition

eg. As per sec 2(20)
company means

a co. incorporated
under this Act or
under any previous
co. law.

↓

The def here
cannot be extended
further.

inclusive/ extensible
definition.

↓

eg. As per sec 2(11)

body corporate
includes a co. incorporated
outside India.

↓

This means the def.
can be extended
to include Indian
Companies & others
have separate legal
entity, perpetual
Succession, common seal.

If any definition contains both means &
include it shall be regarded as
exhaustive & restrictive definition.

eg. As per Sec 2(84) shares means share in
the capital of the company and
includes stock.

SHALL AND MAY:-

SHALL

① Shall means
compulsory i.e.
mandatory

② It is imperative

MAY

① May means directory i.e.
optional.

② It is enabling.

However sometimes shall is read as may
& may is read as shall.

eg:- As per sec 3 of the Companies Act 2013
a company may be formed for a
lawful purpose.

Here the word 'may' shall be read as
shall.

Preliminary: w.

Sec 1 of the GCA 1897 mentions its short title as the 'General Clauses Act 1897'. It does not specify the extent, commencement & applicability of the Act.

Definitions u/s 3:-

- ① Act Sec 3(2): w. Act with reference to offence or civil wrong includes

series of act done or illegal omissions.

- ② Affidavit Sec 3(3): w. includes affirmation & declaration.

In other words, affidavit is a written statement made on oath to be used as evidence in the court or under any other authority.

- ③ Central Act Sec 3(2):- Central Act means any Act of Parliament & includes

Any Act passed by the Dominion Legislative Assembly before the commencement of the Constitution

and

Any Act passed by the Governor General before such commencement.

- ④ Central Government Sec 3(8):-

Before commencement of the Constitution

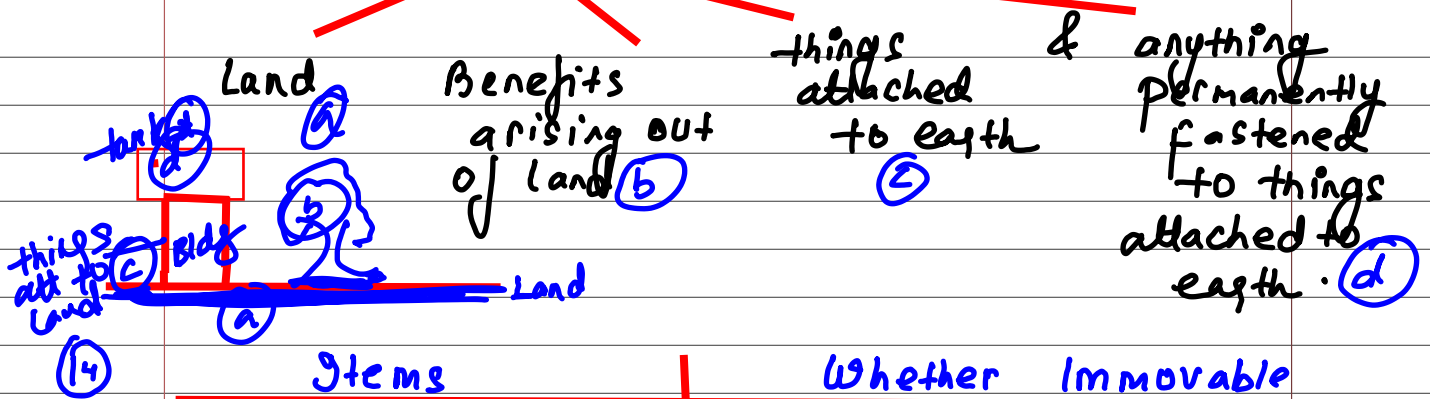
↓
shall mean the Governor General of India

After commencement of the Const.

↓
shall mean the President of India.

- (5) Commencement Sec 3(13): → shall mean the date from which the Act or Regulation shall come into force.
- (6) Document Sec 3(18): → includes any substance upon which any matter is written or expressed by means of letters or figures or combination of both for the purpose of recording any matter. Eg. file, letters, books, painting, inscription, computer files.
- (7) Enactment Sec 3(19): → shall include Regulation. It shall include Central Acts & State Acts.
Eg. Regulation of Madras, Reg of Bombay, The Companies Act 2013,
- (8) Financial Year 3(21): → means year starting from 1st day of April.
- (9) Calendar Year Sec 3(66): → Calendar year means British calendar which covers Jan to Dec.
- (10) Good Faith Sec 3(22): — A thing shall be deemed to be done in good faith if it is done honestly, whether it is done negligently or not.
Held in the case of Maung Aung Pu v/s Maung Si Maung that nothing shall be deemed to be done in good faith which is done without due care & diligence which is expected from a man of ordinary prudence. Thus, even an honest purchase made by a person without proper enquiries can't be said to be done in good faith.
- (11) Government Sec 3(23): ~ shall include both central & state Govt.
- (12) Government securities Sec 3(24): — shall mean securities issued by C.U & S.G.

(13) Immovable Property Sec 3(26):- shall include



Items	Whether Immovable
① Trees	Yes
② Timber	No
③ Building	Yes
④ Machinery fixed to soil	Yes
⑤ Standing crops.	Yes
⑥ Right of way to access	Yes
⑦ Right of drainage of water.	No

(14) Imprisonment Sec 3(27):- shall mean imprisonment of either description mentioned in Indian Penal code.

There are 2 types of imprisonment mentioned in Indian Penal code.

Simple Imprisonment

Rigorous Imprisonment.

(15) Indian Law Sec 3(29) → shall mean

Act Ordinance Rule Regulation Order Byelaws.

(16) Month Sec 3(35):- shall mean a month reckoned as per British Calendar year.

(17) Movable Property Sec 3(26):- shall mean property of any description except immovable property.

(18) Oath Sec 3(37):- shall include affirmation & declaration.

(19) offence Sec 3(38):- shall mean any act or omission punishable by any law for the time being in force.

(20) Official Gazette Sec 3(39):- shall mean

Gazette of India & Gazette of State.

(21) Person Sec 3(42):- shall include

company association of persons body of individuals whether incorporated or not.

(22) Registered Sec 3(49):- with reference to a document shall mean registered in India as per law of registration in India.

(23) Rule Sec 3(51):- shall mean Rule made due to power conferred by an enactment.

(24) Schedule Sec 3(52):- shall mean schedule to the Act.

(25) Section Sec 3(54):- shall mean section in the Act.

(26) Sub-section Sec 3(61):- shall mean sub-section to the section.

(27) Swear Sec 3(62):- shall include affirmation & declaration.

Note:- The terms Affidavit, Oath & Swear have same meanings in the Act.

(28) Writing Sec 3(65):- includes anything in writing or printing or lithography & other modes of reproducing/representing words in any manner.

General Rules Of Construction (Sec 5 to Sec 13)

Operation Of Enactment (Sec 5)

The Central Act or Regulation shall come into force from the specific date of enactment mentioned in O.G.

However if no specific date of enforcement is mentioned in O.G. then it shall come into force from the date when it is published in O.G.

If it is not required to be published in O.G. then it shall come into force from the date when President signed.

eg. The Companies Act 2013 received President's assent on 29th Aug 2013 but published in O.G. on 30th Aug 2013. So it became operative from 30th Aug 2013.

Effects Of Repeal Sec 6

Repeal of a Central Act or Regulation shall not

① Revive anything which was earlier not enforced.

② Affect prior management of any legislation

③ Affect any claim, privilege, obligation, debt obtained

④ Affect any punishment or forfeiture or penalty

⑤ Affect any inquiry/ litigation initiated or to be initiated under previous legislation

3 Case laws Related to Repeal

State of UP

vs

Harendra Pal Singh

Kolhapur

Cane Sugar

Works Ltd vs

Union of India

Narrangpura Gram

Dharmada

Mikat Trust

vs

Ramaji Ramaji

Repeal means complete obliteration of the Act/Regulation as if it never existed in the statutory books of law except for few purposes up to 6.

Repeal can be only of Act/Regulation & not of the Rules.

There is a distinction between Repeal & Deletion. Repeal means entire Act getting obliterated but Deletion means some provisions getting omitted.

Revival of the Repealed Enactment (Sec 7)

Allowed both partly or fully -

Construction of Reference to Repealed Enactment (Sec 8) :-

If any central Act or Regulation mentions or refers to another Central Act or Regulation which has been repealed by a new Central Act or Regulation, then it shall be deemed that such reference is to new central Act or Regulation instead of the repealed one.

For eg - SEBI Act refers sometimes in its legislation to the Companies Act 1956 which has been repealed. It shall be assumed that such an reference is being made to the new Act i.e. The Companies Act 2013 & not to the repealed one.

Commencement & Termination of Time Sec 9

In computing the due date, in any Central Act or Regulation, we shall exclude the first day & include the last day in the series of days.

For eg:- If dividend is declared on 1st Oct 2024 then its due date will be 30 days from 1st Oct 2024 i.e. 31st Oct 2024 i.e. we excluded 1st Oct 2024 but included 30th day i.e. 31st Oct 2024.

Computation of Time Sec 10

If any act or proceeding was required to be done on a particular day & that day happens to be holiday of court or office in which such proceeding or act has to be done then it shall be sufficient if that act/proceeding is done on the next day after court/office opens.

Measurement of Distance Sec 11:-

Distance is measured on a horizontal plane in a straight line.

Duty to be taken pro-rata on enactment Sec 12:-

If any duty like custom, excise or similar nature is chargeable on the basis of quantity, value then for some other quantity, value of same item/product it will be charged proportionately if no specific duty is prescribed.

Gender and Number Sec 13:-

Words imparting
(denoting)
masculine
gender shall
include feminine

Singular words
shall also
include
plural &
vice-versa.

gender & vice versa.

Powers & Functionaries (Sec 14-19)

Sec 14 Power conferred to be exercisable from time to time:-

Whereby any Central Act/ Regulation, if any power has been conferred then unless otherwise provided such power can be exercised from time to time whenever the occasion demands.

Sec 15 Power to Appoint to include power to appoint ex-officio:-

Whereby any Central Act/ Regulation, power to appoint a person has been conferred, then such appointment can be made by name of the person or by virtue of his holding such position.

Sec 16 → Power to Appoint also includes Power to suspend / Remove:-

Where any Central Act/ Regulation has given the power to appoint then the authority who has been given such power to appoint any person shall unless otherwise provided also have the power to remove/ suspend the appointed person.

[SC Judgement *Rayarpan Vs Madhvi Amma*]

Sec 17:- Substitution of functionaries:-

When functions have been made applicable to a particular office then it shall keep applying to every new person who holds the office.

Sec 18:- Successors:-

It shall be sufficient if any Central Act/ Regulation mentions about compliance of laws by representatives/ successors of any corporation/ body corporate.

eg. If anything is required by law to be complied by director then it has to be complied by co & vice-versa.

Sec 19:- Office Chiefs & sub-ordinates:-

Any law applicable to chief or superior of office shall also be applicable on the sub-ordinates working under him.

Provisions as to Rules, Orders etc made under Enactment (Sec 20 to 24).

Sec 20 Construction of Orders etc made under Enactment:-

The expressions/ words used in the orders, notifications, Rules, Byelaws, forms, Scheme etc shall have the same meaning as given in their Central Act/ Regulation.

Held by SC in case of Subhash Ram Kumar vs State of Maharashtra, that notification published in O.G means notification published by authority of law.

Sec 21 Power to issue includes power to rescind, amend, vary etc:-

Where by any legislation, power to issue notification, Rules, Byelaws, orders have been given to a particular authority then such authority shall also have the power to amend/ add/ rescind such notification, Rules, Byelaws, order.

Held in SC judgement Rasid Javed vs State of UP that authority who has the power to issue notification has undoubtedly the power to withdraw it.

Sec 22:- Making of Rules, Byelaws etc. between passing & commencement of Enactment:-

If Rules, Byelaws, Orders etc have been issued but relates to such a Central Act/ Regulation which has been enacted but not yet

Operational / Commenced then all such Rules, Bye laws, Orders etc will not have any effect until & unless the Central Act/ Regulation commences.

Sec 23:- Provisions relating to Making of Rules, Bye-laws

- ① The prescribed authority who has the power to issue Rules, Bye laws etc shall make a draft of it.
- ② Such draft will be published in the manner authority thinks fit to give information to persons who are likely to be affected.
- ③ The prescribed authority shall also fix a date in a notice upto which the persons who are likely to be affected can submit their representations if any.
- ④ Such representations would be considered by the Prescribed Authority.
- ⑤ Final Rules/ Bye laws shall be prescribed in O.G.

Sec 24:- Continuation of Order, Rules etc in Case of an Enactment Repealed but Reconstituted:-

If any Central Act/ Regulation is repealed but reconstituted again either with or without modifications, then all the past Rules, notifications, Orders will be applicable.

Miscellaneous:- Sec 25 to Sec 30

Recovery of fine Sec 25:- If any fine is imposed under any central Act or Regulation or its Rules/ Bye laws etc. then such fine shall be recovered from the person as per Sec 63 to 70 of Indian Penal Code & as per the provisions of Criminal Procedure Code.

An offence Punishable under 2 or More Enactments Sec 26:-

The person can be prosecuted & punished only once for the same offence under

any of those enactments in which its an offence.

Meaning of Service by Post Sec 27:-

Any document which is required to be served by post is deemed to be duly served only if all 3 conditions are satisfied.

It must be properly addressed

Must be pre-paid

Must be sent by registered post.

3 Case laws Related to Service by Post

United Commercial Bank vs Bhim Singh Makhija

↓
If notice which was required to be sent by Registered post 'Acknowledgement Due' is only sent by registered post then its an invalid notice.

Jagdish Singh vs Natthu Singh

↓
If notice sent by landlord was not accepted by tenant then also its deemed to be duly served

Vandana Gulati vs Gurmeet Singh

↓
Notice sent at registered address of a person is deemed to be duly served to him unless the contrary is proved.

✓ 1st Sep - Div declare + 30 days.

31st Sept
1st Oct
included

Limited Liability Partnership Act

Introduction:-

LLP Act 2008 is applicable to whole of India.

LLP Act was assented 7th Jan. notified thereafter in O.G.

81 sections & 4 Schedule. Sec [81 → omitted].

First Schedule

Mutual rights & duties of partner & LLP in absence of agreement.

Second Schedule

Conversion of firm into LLP

Third Schedule

Conversion of Pvt. co to LLP

Fourth Schedule

Conversion of unlisted Public co to LLP.

Features of LLP

↓
Liability of partner will be limited to the extent of capital contribution

↓
New form of legal entity with limited liability

↓
Alternative Corporate Business Vehicle

↓
Allow the partners the flexibility of organising their structure

↓
LLP itself will be liable for the full extent of its assets.

Some Important Definitions:-

Body Corporate Sec 2(1)(d)

means

A company as defined under Companies Act 2013 & includes

Does not include

corporation sole

co-operative society

any other B.C

notified
by C.A.

LLP foreign LLP foreign Co.

Financial Year sec 2(1)(L)

If LLP incorporated
after 30th September

↓
31st March of
next following
that year.

Others

↓
1st April to 31st March
of the following
year.

Small LLP Sec 2(1)(ta)

Contribution

AND

Turnover

not exceed 25 lacs

↓
[subject to
such higher
amt as may be
prescribed but
not exceeding
5 crores]

as per Statement
of A/c & Solvency
in the immediately
preceeding FY does not
exceeds 40 lacs or
such higher amt. not
exceeding 50 cr. super
as may be prescribed.

or
which meets such other requirements & conditions
as may be prescribed.

Applicability of Companies Act 2013:-

words & expressions used & not defined in the
LLP Act

↓
Then Companies Act definition will apply.

Note:- Partnership Act 1932 does not apply to LLP.

2(1)(a) address means address in relation to Partner of LLP

Individual (Partner)
residential address

B.C (Partner)
registered office
address of B.C.

#

Characteristics of LLP

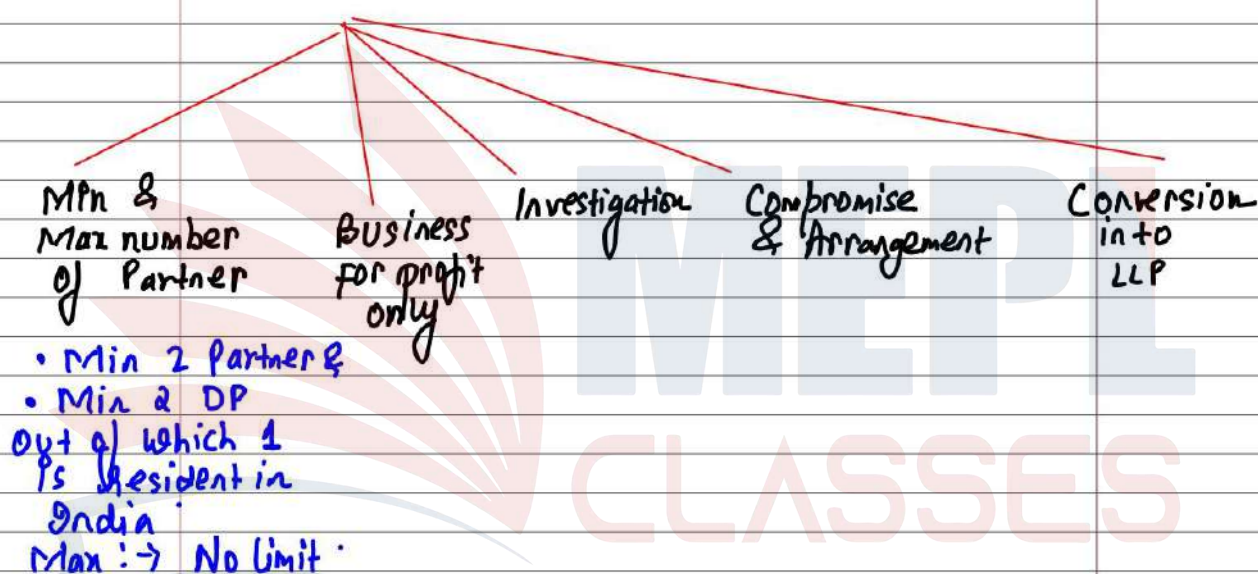
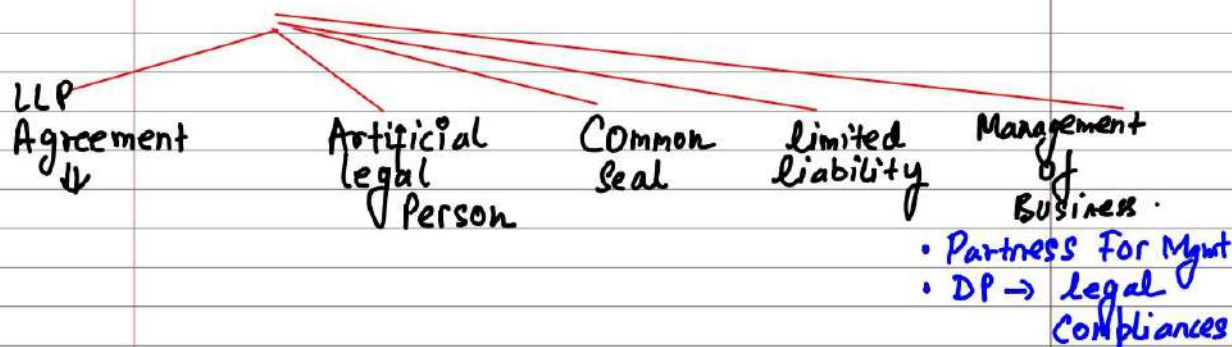
Body Corporate

Perpetual
succession

Separate
legal

Mutual
Agency

Entity



E-filing of Documents

foreign LLPs.

Advantages of LLP

Organised & Operates on the basis of agreement

Provides flexibility without imposing detailed legal & procedural

easy to form

All partner enjoy limited liability.

Easy to dissolve.

Requirement

Partner (sec 5).

Any Individual
or Body
Corporate.

An Individual
shall not be a partner
of LLP if

he is
of unsound
mind

un-discharged
insolvent

Applied for
insolvency &
application
is pending.

following person can become Partners in LLP.

Individual
incl.
(NRI &
OCI &
foreign
National)

LLP

Companies
(incl.
foreign
companies)

Foreign
LLPs

LLP
incorporated
outside
India

Foreign
companies

Note:- Corporation Sole & Co-operative Society cannot
become partners.

#

PROJ making investment in LLP (NRI & OCI)

Non Repatriation
Basis

↓
Since not an
FDI
↓
Only LLP Act
apply.

On Repatriation
Basis

↓
FDI compliances i.e
FEMA, 1999
(+)
LLP Act.

Sec 6:~ Minimum No. of partners:-

Min 2 partner

Any time reduced below 2

↓
If business carried on for more than six months then the only partner who carries out the business after that shall be personally liable for business of LLP.

Sec 7. Designated Partner:-

Minimum 2 Designated Partner

Who is Individual

Atleast one should be resident in India.

Note:~ If partner is body corporate then nominated individual shall be designated partner.

Conditions for DP (Sec 7).

↓
Incorporation Document & LLP Agreement
7(5)

↓
Consent in form 9
7(3)

↓
File with ROC particulars of individual who gave consent in 30 days of appointment (form 9)
7(4)

↓
DP shall obtain Designated Partner Identification Number (DPIN) from CAY
7(6)

7(5) Every LLP & DP shall satisfy such other conditions as may be

Sec 153 to Sec 159 apply to

Prescribed :

DP [7(6)] :

Liabilities of Designated Partner (Sec 8) :-

Responsible for doing all acts, matters & things as required to be done by the LLP in respect of compliance of provision of the Act (Such as filing of documents, return, statement etc).

liable for all penalties imposed on LLP for any contravention of Act.

Changes of DP (Sec-9) .

Within 30 days of vacancy
Sec 7(4) & 7(5)
shall apply.

If no DP is appointed then each partner shall be deemed to be designated Partner.

ABC LLP

A
(DP)

↓
Died

B
(DP)

↓
DP

C
(partner)

↓
Deemed DP.

Sec 10 :-

Punishment for Contravention of Sec 7 & Sec 9 .

Sec 7(1)

↓
LLP & Every partner

10,000 & 100 per day

7(4)

↓
LLP & every DP

5000 & 100 per day

7(5) or Sec 9

↓
LLP & every partner

Max 1 lac → LLP
Max 50,000 - partner

Max - 50,000 (LLP)
Max - 25,000 (Partner)

10,000

100 per day
1,00,000 → Max (LLP)
50,000 → Max (Partner)

Incorporation of LLP

Sec 11.

(Incorporation Document)

2 or more persons subscribe their names to an incorporation document for carrying on lawful business for profit.

Inc. Document filed electronically with the Registrar of State where LLP's RO is situated & processed by CRC

↓
FILLIP form

Statement from

Advocate/
CS/CA/CMA AND who is engaged in formation of LLP

By anyone who subscribed his name in inc. document.

- Acts & Rules to be followed
- Matters incidental thereto.

(2) Details in Incorporation Document

↓
Name of LLP

↓ proposed Business of LLP

↓ Address of Registered Office.

↓ Name & Address of Partners

↓ Name & Address of OP.

↓ Such other info as may be prescribed.

(3) Advocate/CA/CS/CMA/ Person

Makes false statement

or does not believe it to be true

⇒

Penalty [False declaration]

Imprisonment upto 2yrs AND fine

Min 10,000

Max 5 Lacs

Incorporation by Registration (Sec 12).

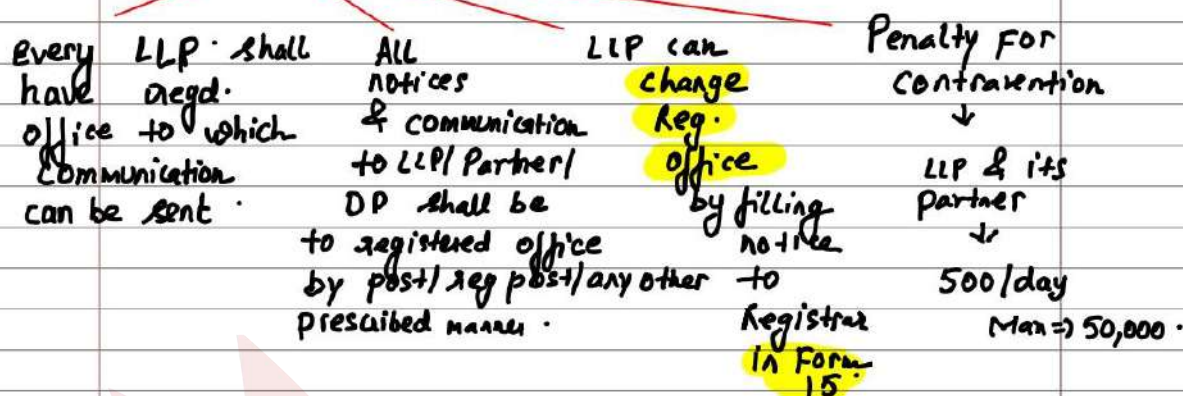
Register within 14 days

Register Incorporation Document

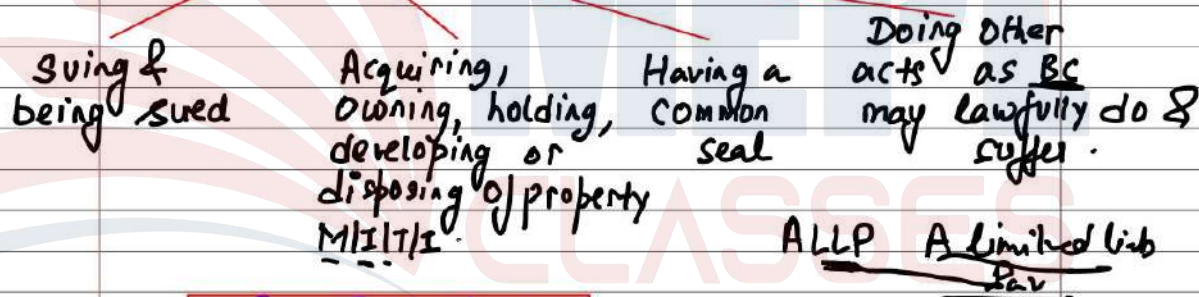
Give certificate of Registration by the

- certificate shall be signed by the Registrar & authenticated by his official seal. name of LLP.
- cert → conclusive evidence of LLP's existence.

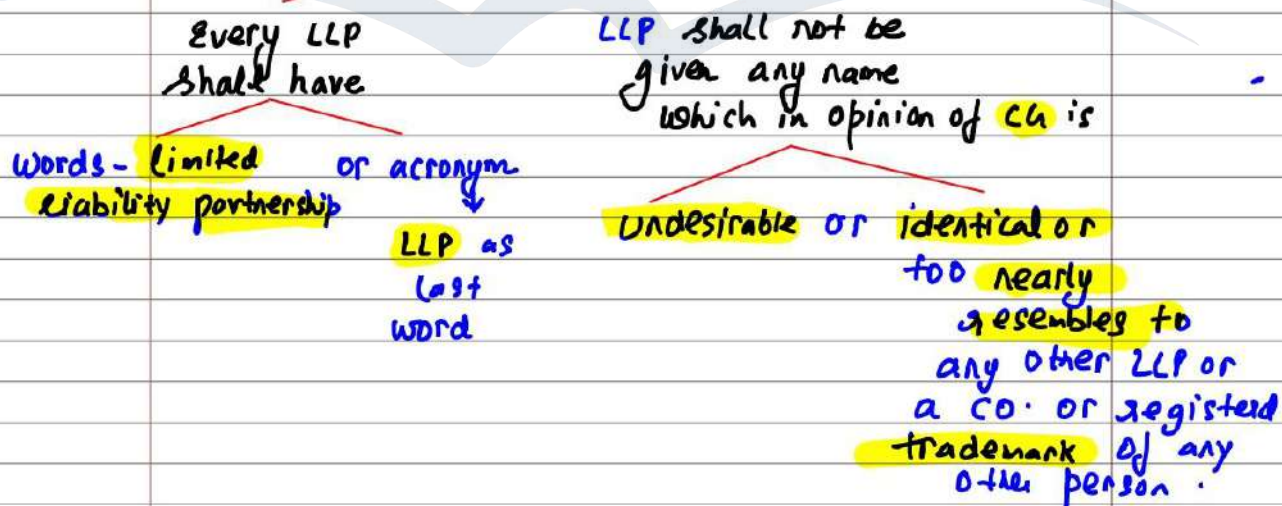
Sec 13 Registered office of LLP & change therein.



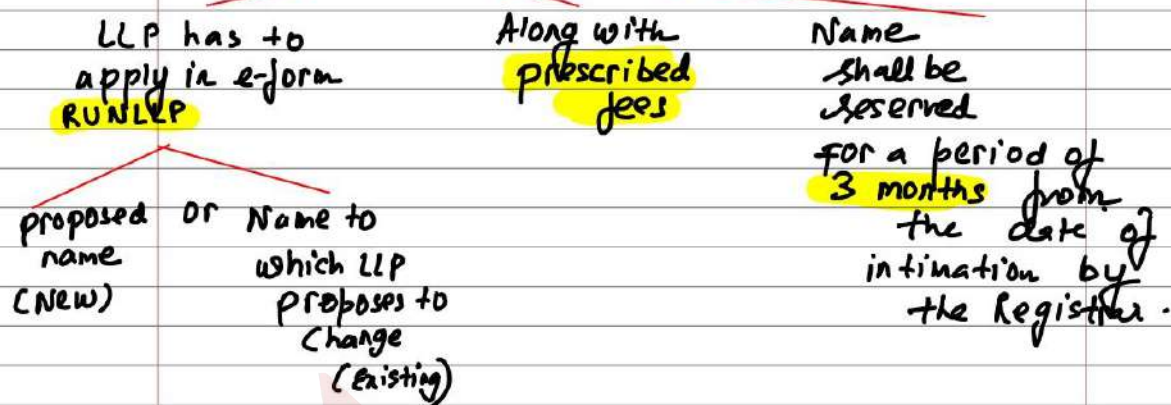
Sec 14: → Effect of Registration:-



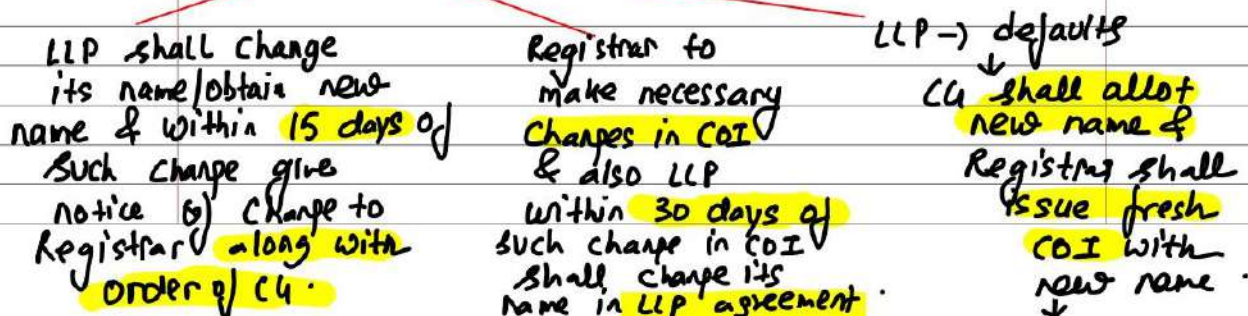
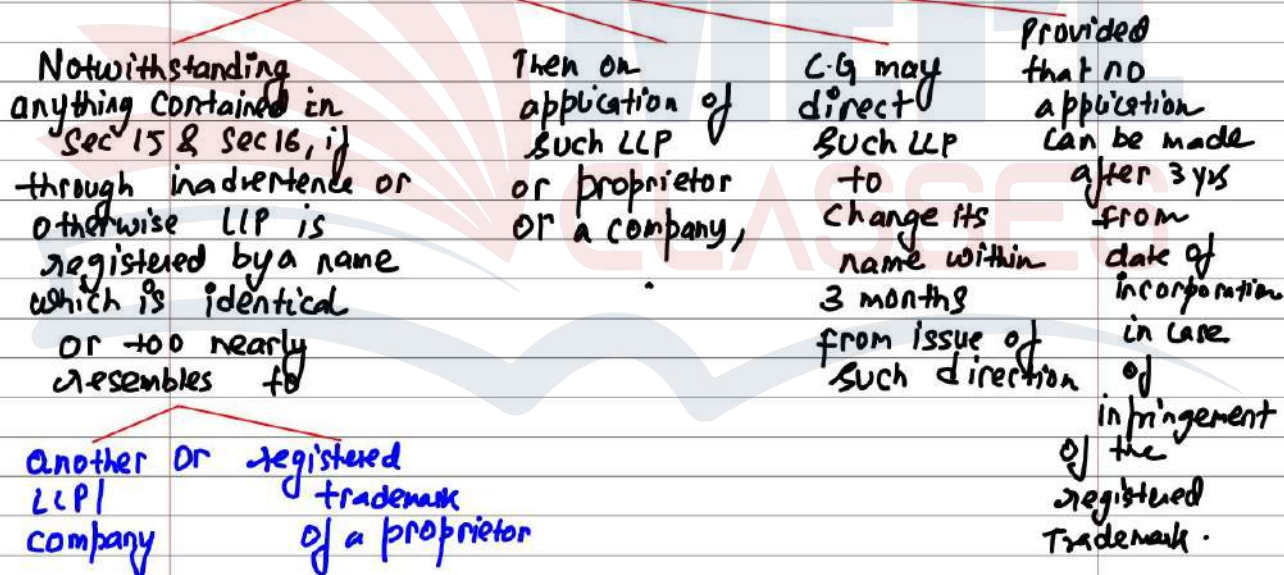
Sec 15 → Name.



Sec 16:→ Reservation Of Name .



Rectification of name of LLP (Section 17) .



Provided that
nothing contained
here shall prevent
LLP from
subsequently
changing its name.

STEPS TO INCORPORATE LLP.

Step 1: → Reservation of name of LLP (RUNLLP).

Step 2: → Incorporating new LLP (Fillip).

Step 3: → Execution of LLP Agreement

↓
mandatory as per Sec 23. → Filer in (e form-3)
within 30 days of inc. of LLP.

Sec 22: Eligibility to be partners

Subscribers
to the
incorporation
document
shall be
partners

AND

Any other
person
in accordance
with the LLP
agreement.

Sec 23 Relationship of Partners:-

(1) Mutual
rights & duties
of Partners of
LLP & of LLP
& its partners are
governed by
LLP agreement.

(2) Any
changes
in LLP
agreement
to be
filed with
the Registrar
along with
prescribed
fees &
manner.

(3) An agreement
in writing
made before
inc. may
impose obligations
on LLP
↓
Later on
can be
satisfied by all
the partners
after inc. of
LLP.

(4) If no agreement
↓
Provisions of
first
Schedule to
apply.

Sec 24: → Cessation of Partnership Interest:-

If there is agreement

↓
Then as per agreement with other partner [LLP agreement]

If no agreement

↓
By giving notice to other partner of his intention to resign as partner.

(Not less than 30 days notice)

A person shall cease to be

↓
On Death/
Dissolution

↓
Declared
Insound
Mind

↓
Declared as
insolvent or
applied for insolvency.

Effect of Cessation:-

↓
The former partner shall be regarded as partner unless

the person or has notice that former partner has ceased to be a partner of LLP

notice of cessation has been delivered to Registrar.
e-form-4.

↓
Unless otherwise provided in the LLP Agreement.

The former partner or his legal heir/representative in case of Death/Insolvency

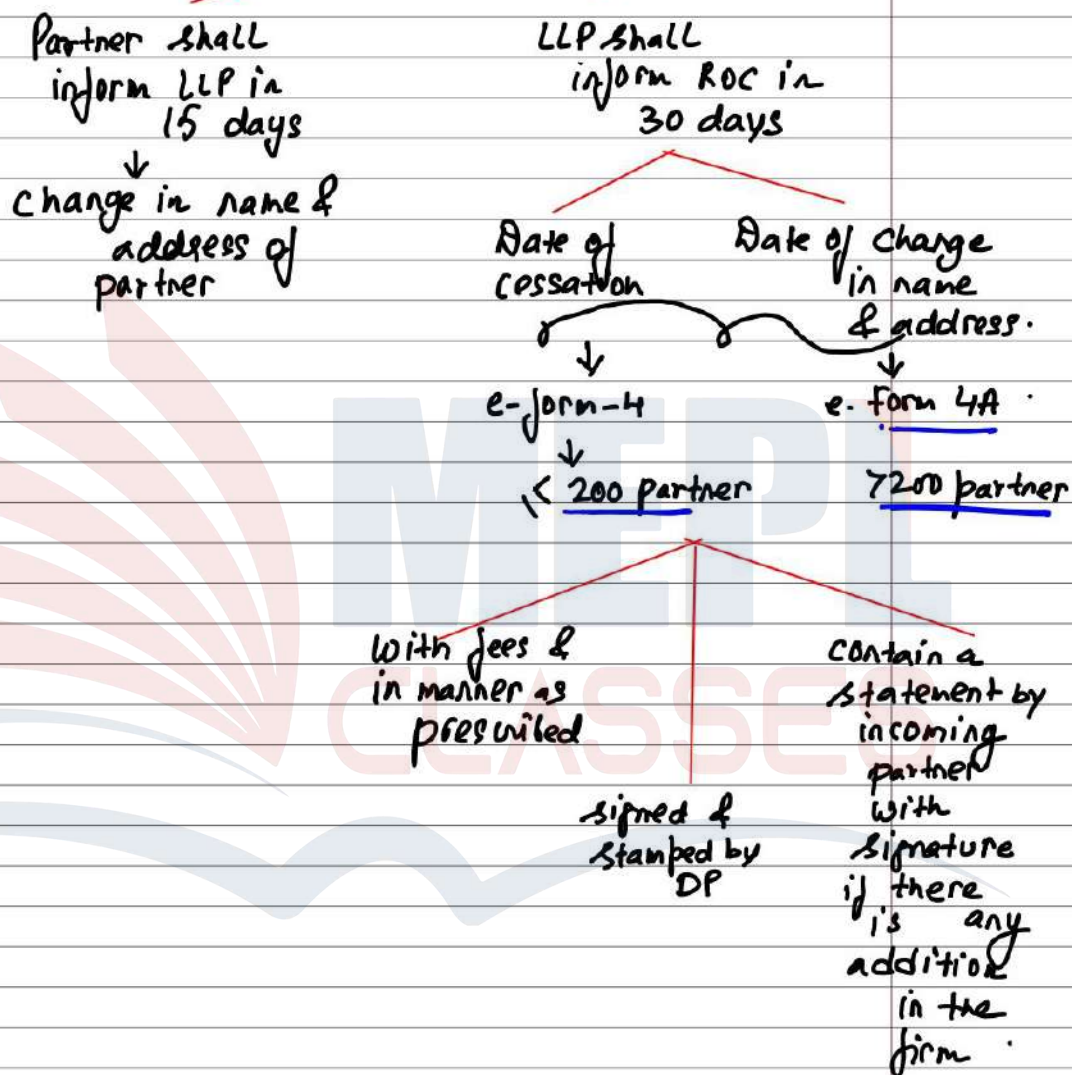
shall be entitled to his share

An amount equal to capital contribution of the former partner

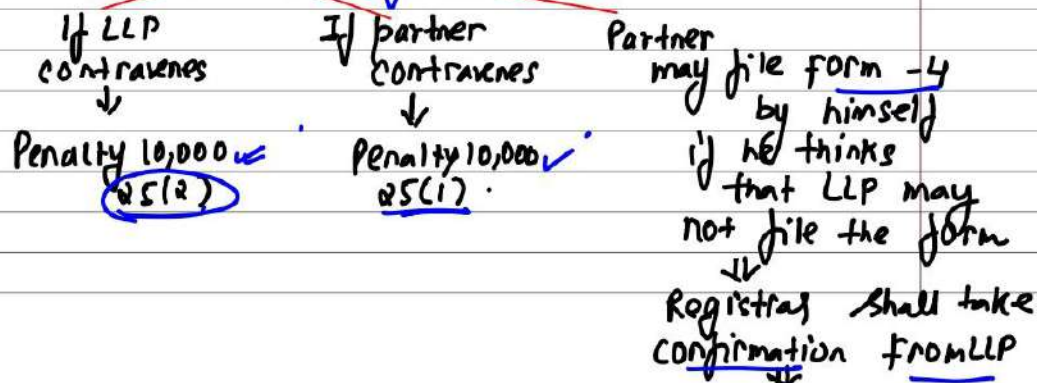
AND his right to share in accumulated profit of the LLP after deduction of

any loss on
the date of
cessation.

Sec 25: → Registration of Changes in Partner:-



Contravention of Sec-25:



If no confirmation in
15 days

Registrar shall
register the
change of such
cessation.

Extent & Limitation & Liability of LLP & Partner

Sec 26
↓
Every partner
is agent of
LLP &
not other
partner

27(1)
↓
LLP shall not
be bound by
any act of the
partner

Partner
has no
authority

Person
has no
authority
or if
he believes
he is partner
but he is not

27(2)
LLP
shall be
liable
if partner
is liable
to any
person
as a
result of
omission/
wrongful
act in
the case of
business of
LLP.

27(3)
Obligation
of LLP
arising
out of
contract
is solely
the
obligation
of LLP.

Note:- Liability of LLP shall be met out of estate/
property of LLP **27(4)**.

Extent of Liability of partner Sec 28.

A partner is
not personally
liable

However he will be
liable for his own
wrongful act or
omission but not
for any other partner of
LLP.

Ans LLP

Sec 29 :- Holding Out:-

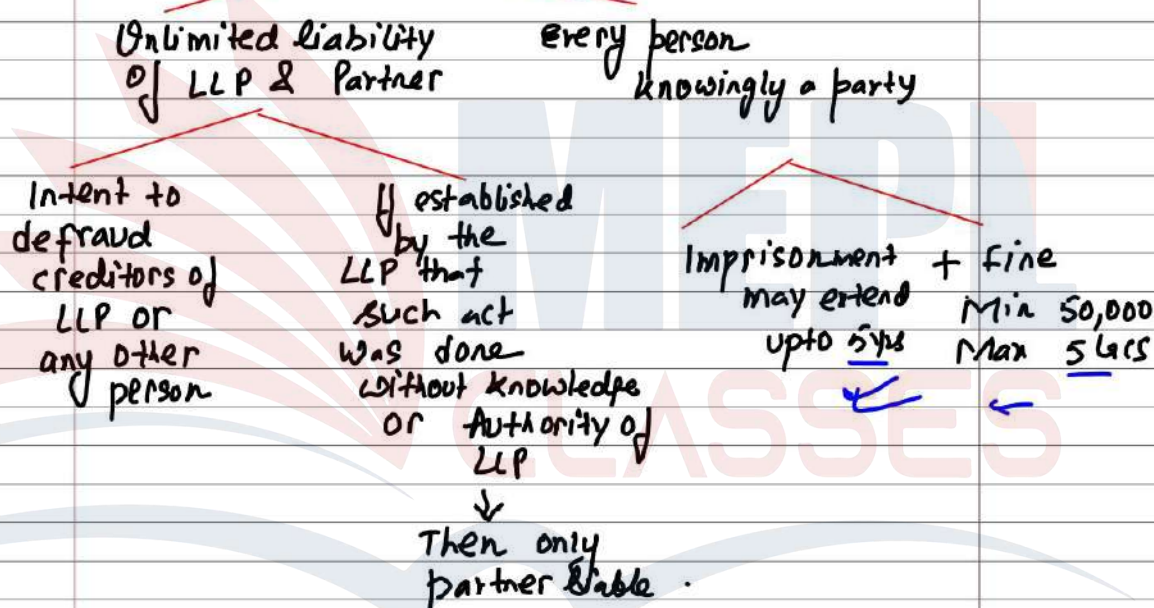
Any person who by words spoken or written or
by conduct represents himself or permits
himself to be represented as a partner in LLP he
shall be liable to any person who on such

mis-representation gives credit to LLP whether the person representing himself knows or does not know whether rep. has reached the person so giving credit.

However, credit is received by LLP, LLP shall be liable to the extent of credit received by it.

Q7) On partner's death if LLP continues using the name of the deceased partner's name shall not make his legal rep or his estate liable for act done after his death.

Sec 30. V. 2nd



Note:- DPL Partner/LLP shall compensate for the loss/compensation to person who has suffered such loss or damage

However if LLP has no knowledge or authority
Then LLP not liable.

Sec 31:- Whistle Blowing:-

The court or tribunal may waive off or reduce the penalty of any

Also the person who has assisted in investigation shall not

Employee or partner of LLP if such a partner has provided certain information during the investigation as a result of which some other partner/ee/DP of the LLP is convicted under this Act or under any other Act.

be harassed, demoted, or be discriminated against in such LLP.

#

Contribution:-

Form of Contribution (Sec-32)

May consist of

- ✓ Tangible/Intangible
- ✓ Movable/Immovable
- ✓ Any other benefit
- ✓ Money
- ✓ Promissory Note
- ✓ Any other type of Contribution

Monetary Value of Contribution of each partner shall be accounted & disclosed in the accounts in Form 8

Obligation to Contribute (Sec-33)

As per LLP agreement

Creditor may extend credit & the primary obligation may be enforced on the partners for the recovery.

#

Books of A/c (Sec-34)

Proper Books of A/c

Every LLP shall maintain proper books of A/c.

On Cash/ Accrual Basis

shall maintain the same at its registered office for period as may be prescribed
↓
8 yrs.

Statement of A/c & Solvency

Every LLP

within 6 months from the end of FY

Prepare Statement of A/c & Solvency for the said FY as at last day of FY

in Form 8 shall be filed with registrar every year with prescribed fees.

Audit by C4

Books of
A/c shall
be audited

C4 may exempt
by notification in O4
certain class of LLP.

If e-form 8 not filed

LLP
↓
₹ 100 per day
Max 1 lakhs.

Every OP
↓
₹ 100/day
Max 50,000

If BOA/ Statement of A/c and solvency/ Audit not conducted

LLP
Min :- ₹ 5000
Max :- 5 lacs

Every OP
Min :- 10,000
Max :- 1 lac.

Sec 34A → A/c & Auditing Standard

C4 in consultation
with NFRA
U/s 132 of Companies
Act, 2013

Prescribe the following.

Standards
on Accounting

Standard
on
Auditing
as
recommended
by ICAI.

Sec 35- Annual Return :-

Every LLP

file
Annual
Return
with Registrar

Within
60 days
of closure
of its
FY.

in Form-11.

Penalty for non-filing:-



Note:- Documents filed by LLP can be inspected by any person on payment of fees (Sec 36)

Note:- If any person gives false information or omits any material facts then such person shall be punishable

Imprisonment + fine
upto 2 years Min 3 lacs
Max 5 lacs

CONVERSION INTO LLP

FIRM - LLP

↓
provisions of this Chapter And
Second Schedule

↓
Form 17

↓
Sec 55

PVT CO - LLP

... AND THIRD
Schedule

↓
Form 18

↓
Sec 56

UNLISTED PUBLIC CO - LLP

... AND Fourth
Schedule

↓
Form 18

↓
Sec 57

Sec 58 (Effects of conversion)

Registrar to register the documents & issue Cert. of Registration stating LLP is registered after being satisfied that all compliances done by firm/Pvt co/Unlisted Pub Co.

LLP shall within 15 days of registration inform the concerned Registrar of Firms OR ROC with which it was previously registered about the conversion & LLP's particulars

① Upon such conversion on & from

③ Upon such conversion the shareholders of Pvt/

the date of Cert. of Reg, the effects of conversion shall be such as specified.

Unlisted public co, partners of firm & partners of LLP shall be bound by the respective Schedules.

Effects of Reg:-

Notwithstanding anything contained in any other law, from the date of registration there shall be a LLP registered under this Act.

All properties tangible/Intangible/ Movable/Immovable/ Assets/ Interest/ Rights/ privileges/ obligations relating to firm/co → shall be transferred to & vested in the LLP without further assurance, act or deed.

The firm/co. shall be deemed to be dissolved & removed from the records of the RoF/RoC as the case may be.

Sec 59: -7 CL may make rules for provisions in relation to establishment of place of business by foreign LLP within India.

Winding Up & Dissolution:- Sec 63:-

may be either voluntary or by Tribunal & after being wound up it gets dissolved.

Circumstances in which LLP may be wound up by Tribunal:-

If LLP decides that LLP be wound up by the Tribunal

If for more than 6 months, no. of partners in LLP is reduced below 2.

If LLP acted against the interests of the sovereignty & integrity of India.

If LLP has made a default in filing with the Registrar the Statement of A/c & Solvency or Ann. Return for any 5 consecutive fy. On just & equitable grounds in opinion of Tribunal.

c.4 to prescribe rules in relation to winding up.

Sec 66:- Business Transactions of Partner with LLP →
A partner may lend money to & transact other business with the LLP & has the same rights & obligations with respect to such transaction as to a person who is not a partner.

Sec 67:- Application of the Provisions of the Companies Act:-

C4 may by notification in O4 direct to apply any of the provisions of the Companies Act on LLP or apply with exception, modification.

Draft copy of notification to be laid before each House of Parliament for total period of 30 days & if disapproved, notification shall not be issued.

Sec 69:- Additional fees may be prescribed in addition to any fees as is payable for filing of such document or return.

Sec 70:- Enhanced Punishment:-

↓
twice the amt. of fine for such offence.

Compromise/Arrangement or Reconstruction. Sec 60:



↓
Compromise/Arrangement

LLP
Creditor
Partner
Liquidation (In case of winding up).

Apply

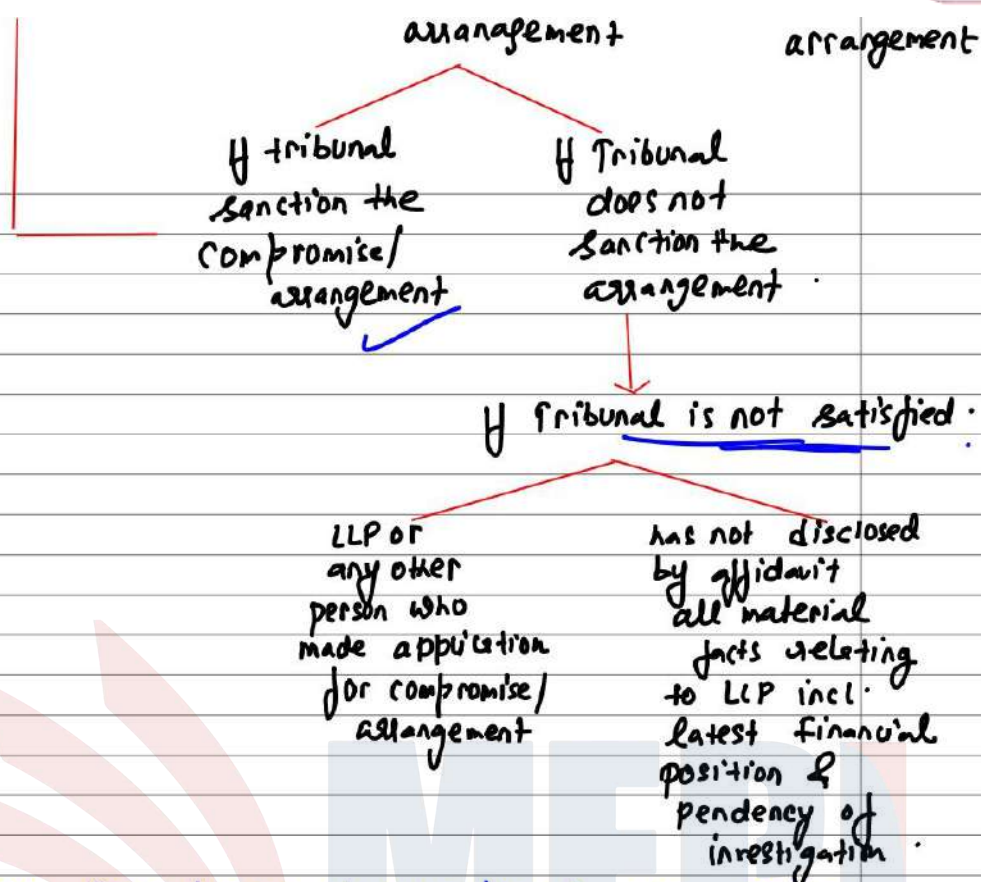
Tribunal

↓
Order meeting of creditor or Partner

Binding.

If 3/4 agree to compromise/

If 3/4 does not agree to compromise/



Note:- Tribunal order shall be filed in eform 22 by LLP within 30 days of the order shall have effect only after filing.

Non Compliance

Every LLP	DP
10,000 + 100/day	10,000 + 100/day
Max - 5L	Max - 50,000

Note:- Tribunal has the power to stay the suit pending against LLP.

Note:- Tribunal has the power to supervise the carrying out of the Compromise/ arrangement & can also give order in relation to such arrangement

Note:- If Tribunal is satisfied that such compromise/ arrangement not workable then it

On its own or on application by any person.
order for winding up

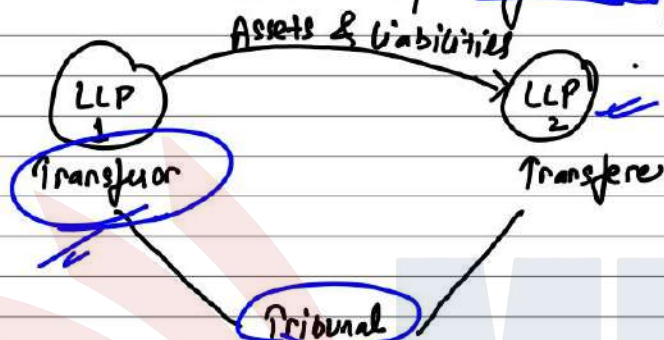
of LLP u/s 64.

Reconstruction Or Amalgamation of LLP:-

Partner → LLP → Creditor

↓
Application u/s 60

↓
for purpose of
reconstruction / amalgamation of 2 or more LLPs.



will sanction after making provisions for following:-

Transfer of
whole or
part of
undertaking,
property or
liability

continuation
of any
legal
proceedings
between
transferor &
transferee

Dissolution
without
winding
up of
Transferor
LLP (i.e. LLP 1).

Provision
to be
made by
Tribunal
regarding
any
dissent
by any person

Such
other
matter
incidental
to the
arrangement.

Note:- Tribunal shall not pass order for amalgamation of 1 LLP that is being wound up with other LLP
 ↓ unless
 Report from Registrar that
 the affairs of LLP are conducted
 not prejudicial to int. of partner or
 public.

Note:- No order for dissolution by Tribunal

- ↓
- ① official liquidator has done scrutiny of books & papers of LLP
 - ② official liquidator has made a report that affairs not managed

against the int. of partner or public.
Note:- Certified copy of order to be submitted to Registrar within 30 days of the order.

Penalty same as sec 60

Power of registrar to obtain info (sec-38)

Registrar may seek info from partner/ DP/ Employee of LLP.

Summon before him or any inspector or any public officer

if such person fail to comply then fine
 Min 2000 Max ₹5000

Assignment & Transfer of Partnership Rights

Rights of a partner to share of profits & losses & to receive dist. are transferrable either wholly or in part.

Transfer does not by itself cause the disassociation of partner / dissolution of LLP.

Transferee or assignee not entitled to participate in mgmt or conduct of activities of LLP or access info. concerning the transactions of LLP.